

UNITED STATES COURT OF INTERNATIONAL TRADE

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In re ELECTRONIC FILING PROCEDURES

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:
: **ADMINISTRATIVE ORDER**
:
: **No. 02-01**
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WHEREAS, Rules 1, 5, 79 and 80 of the Rules of the U.S. Court of International Trade and 28 U.S.C. §§ 251, 258, 451, 452, 1651, 2632 and 2633 authorize the Court to enter all appropriate orders respecting practices and procedures for filing, signing, verifying and providing public access to Court documents; and

WHEREAS, this Administrative Order is intended to be applied and interpreted in connection with an Electronic Filing Procedures Users' Manual (the "Users' Manual") which, together with this Administrative Order, shall be termed the "Electronic Filing Procedures" or "EFP"; and

WHEREAS, the Court has formulated the EFP with the assistance of the Court's Advisory Committee, and has solicited and considered public comment on the proposed procedures; and

WHEREAS, consistent with the EFP, the Court has established a World Wide Website at www.cit.uscourts.gov ("USCIT Public Website") connected to the Internet with the technological capacity to provide public access to all contents of that Website, including all electronically-filed papers, and to permit direct electronic filing of Court papers on that Website via the Internet; and

WHEREAS, the EFP make adequate provision for filing, notice and service of papers and proceedings in actions before the Court, consistent with the requirements of the Rules of the Court; and

WHEREAS, the EFP provide a means for counsel of record and unrepresented parties to sign papers electronically; and

WHEREAS, the EFP require the Clerk's Office to provide adequate procedures for electronic filing of papers on behalf of persons who are not able to access the USCIT Public Website; and

WHEREAS, the EFP require the Clerk's Office to provide adequate public access to the records and dockets of the Court, in accordance with applicable statutes, and the Rules or Orders of the Court including access for persons who are not able to access the USCIT Public Website;

NOW, THEREFORE, IT IS ORDERED as follows:

1. Actions Subject to the EFP.

(a) Upon commencement of an action in accordance with Rule 3(a) of the Rules of the Court, the action shall be subject to the EFP of the Court. The Clerk shall promptly serve the plaintiff(s) with a copy of a Notice of EFP in a form prescribed by the Court. Such Notice shall be served upon the defendant(s) in the action and upon any other parties required to be served together with the summons or summons and complaint served in accordance with Rule 4 of the Rules of the Court. The Clerk shall promptly serve a copy of a Notice of EFP upon any other party who enters an appearance in the action, unless the Court has ordered that the action not be subject to the EFP pursuant to section (b) of this paragraph.

(b) Upon motion of any party for good cause shown, or upon its own initiative, the Court may terminate or modify application of the EFP in any action.

2. Registration as an EFP User and Assignment of Passwords.

(a) Any attorney admitted to practice before the Court, or who is authorized to appear, pursuant to Rule 75(a) of the Rules of the Court, on behalf of the United States or an agency or officer thereof, may register to become a "Registered EFP User" of the USCIT Public Website. Registration shall be accomplished with a non-electronic "EFP User Registration Form" prescribed by the Clerk, which shall require identification of the name, address, telephone number and Internet e-mail address(es) of the attorney ("e-mail address(es) of record"), together with a declaration that the attorney is admitted to practice before the Bar of the Court or is a government attorney authorized to practice before the Court under Rule 75(a).

(b) Any party to a pending action who is not represented by an attorney and who is permitted by the Rules of the Court to appear without an attorney may register as an EFP User of

the USCIT Public Website solely for purposes of that action. Registration shall be by non-electronic filing of the EFP User Registration Form prescribed by the Clerk. If, during the course of the action, the party thereafter retains an attorney who appears on the party's behalf, the appearing attorney shall advise the Clerk to terminate the party's registration as a Registered EFP User upon the attorney's appearance.

(c) Each attorney of record and each unrepresented party to an action is obligated to become a Registered EFP User, unless the Court has otherwise ordered in accordance with paragraph 1(b) of this Order.

(d) EFP User Registration Forms shall be mailed or delivered to the Office of the Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001.

(e) Every Registered EFP User shall notify the Clerk immediately of any change in the information provided in the Filing User's registration. Notification shall be made pursuant to the procedure set forth in the Users' Manual.

(f) Each Registered EFP User shall, upon registration, be issued a User Identification Designation ("User ID") and a Password by the Clerk. The Clerk shall maintain a confidential record of issued User IDs and Passwords.

(g) Each Registered EFP User shall maintain as confidential, except as expressly provided in subparagraph (i), the User ID and Password issued by the Clerk. Upon learning of the compromise of the confidentiality of either the User ID or the Password, the Registered EFP User shall immediately notify the Clerk, who will cancel the old User ID or Password and issue the User a new User ID or Password, as appropriate.

(h) The Clerk may at any time issue and transmit by secure means a new User ID or Password to any Registered EFP User. A Registered EFP User may at any time obtain a new User ID or Password upon request to the Clerk by following procedures set forth in the Users' Manual.

(i) A Registered EFP User may authorize another person to file a paper using the User

ID and Password of the Registered EFP User, and the Registered EFP User shall retain full responsibility and shall be treated as a Rule 11 signatory for any paper so filed.

(j) The USCIT Public Website shall include for each action subject to the EFP a current list of the e-mail addresses of record maintained by the Clerk. Each attorney of record and each unrepresented party shall promptly serve notice upon all parties of any change in such person's e-mail Address of Record for the purposes of the action, and shall file notice of such change with the Court, in the manner prescribed by Rule 75(e).

3. Electronic Filing of Papers.

(a) Except as otherwise ordered by the Court, all pleadings and other papers required to be filed with the Clerk shall be filed electronically on the USCIT Public Website pursuant to the EFP, except for summonses and original complaints referred to in Rule 3 of the Rules of the Court; original third party complaints; original complaints filed pursuant to 28 U.S.C. § 1581(b); Notices of Appeal filed in accordance with Rule 3 of the Rules of the United States Court of Appeals for the Federal Circuit; a request for transfer to the Court from a binational panel or committee pursuant to 19 U.S.C. § 1516a(g)(12)(B) or (D); filings containing confidential, business proprietary or classified information as described in subparagraph (b) below; and certain papers described in subparagraph (g) below. Electronic filing may be made only by a Registered EFP User, or by a person authorized by a Registered EFP User pursuant to paragraph 2(i) of this Order.

(b) Notwithstanding any other provision of the EFP, no paper containing confidential, business proprietary or classified information shall be filed electronically. A party filing a paper that contains confidential, business proprietary or classified information shall file such paper non-electronically in accordance with the Rules of the Court. Public versions of such documents shall be filed electronically in accordance with the requirements and limitations of this Order.

(c) Every paper filed electronically shall be signed for the purposes of Rule 11 of the Rules of the Court by one or more attorneys of record or unrepresented parties (each "Rule 11 Signatory") pursuant to paragraph 4(a) of this Order. For each Rule 11 Signatory, the paper shall

provide such Signatory's name, address, telephone number and e-mail address(es) of record, and shall identify the Rule 11 Signatory as such.

(d) Electronic transmission of a paper to the USCIT Public Website consistent with the EFP, together with the receipt by the person making the filing of a Notice of Electronic Filing from the Court in a form prescribed by the Court, shall constitute filing of the paper for all purposes under the Rules of the Court, except as provided in subsections (b), (g) and (h) of this paragraph, and shall constitute entry of that paper on the docket kept by the Clerk pursuant to Rules 58 and 79 of the Rules of the Court. A paper filed electronically shall be deemed filed at the date and time stated on the Notice of Electronic Filing from the Court.

(e) When a paper has been filed electronically, the official paper of record is the electronic recording of the paper as stored by the Court, and the filing party shall be bound by the paper as filed, unless amended by order of the Court. A party wishing to correct a filing shall file a motion for errata after seeking consent from all parties, in accordance with the provisions of Rule 7(b) of the Rules of the Court. A motion for errata shall list each correction, including the page number for each correction, and shall provide a complete copy of the corrected paper, or indicate that the corrections are minor. The motion shall also include a proposed order either permitting the substitution of the complete corrected copy or ordering the corrections deemed made without physical substitution because the corrections are minor. The corrected filing shall become the official paper of record and the filing date will remain the date of the filing of the original electronic filing. When a motion for errata is made upon consent of all parties in an unassigned case, the Clerk may dispose of the motion as if such motion were expressly listed in Rule 82(b) of the Rules of the Court.

(f) A paper properly and timely submitted and filed in non-electronic form pursuant to Rule 5 of the Rules of the Court shall be deemed filed on the date of such non-electronic filing. Subsequent electronic submission of the same paper shall not be deemed to change the date of original filing of that paper.

(g) Papers, portions of papers or sets of papers that are not readily convertible to electronic form, or which are more appropriately filed as physical exhibits, as described in the EFP Users' Manual, may be filed in paper form. Papers, portions of papers or sets of papers that are in electronic form but exceed certain technical parameters may be filed on a 3.5" diskette or CDROM, as provided in the Users' Manual. Where a portion of a paper is filed electronically and another portion is filed in paper, on floppy disk or CDROM, the latest filing date and time of the multiple portions will be used to determine compliance with applicable deadlines.

(h) Nothing in the EFP shall be interpreted to permit material required to be filed under seal to be filed by any means other than under physical seal.

4. Signatures.

(a) A paper filed with the Court electronically shall be deemed to be signed by a person (the "Signatory") when the paper identifies the person as a Signatory and the filing complies with subparagraph (b), (c) or (d). When the paper is filed with the Court in accordance with any of these methods, the filing shall bind the Signatory as if the paper (or the paper to which the filing refers, in the case of a Notice of Endorsement filed pursuant to subparagraph (d)) were physically signed and filed, and shall function as the Signatory's signature, whether for purposes of Rule 11 of the Rules of the Court, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(b) In the case of a Signatory who is a Registered EFP User as described in paragraph 2, such paper shall be deemed signed, regardless of the existence of a physical signature on the paper, provided that such paper is filed using the User ID and Password of the Signatory. The page on which the physical signature would appear if filed in non-electronic form must be filed electronically, but need not be filed in an optically scanned format displaying the signature of the Signatory. In such cases, the electronically filed document shall indicate an "electronic signature", e.g., "s/Jane Doe".

(c) In the case of a Signatory who is not a Registered EFP User, or who is a Registered

EFP User but whose User ID and Password will not be utilized in the electronic filing of the paper, such paper shall be deemed signed and filed when the paper is physically signed by the Signatory, the paper is filed electronically, and the signature page is filed in optically scanned form pursuant to and consistent with the EFP.

(d) In the case of a stipulation or other paper to be signed by two or more persons, the following procedure shall be used:

(1) The filing party shall initially confirm that the content of the document is acceptable to all persons required to sign the document and shall indicate in the document that such confirmations have been made. To the extent practicable, the filing party shall obtain the physical signatures of all parties on the document.

(2) The filing party shall then file the document electronically, indicating the original signatures that have been obtained, e.g., "s/Jane Doe," "s/John Doe," etc., and the signatures that will be provided through Notices of Endorsement.

(3) The filing party or attorney shall retain the hard copy of the document containing the original signatures until one year after the final disposition of the action in which it was filed.

(4) In the case of any person required to sign the document but for whom the filing party does not obtain a physical signature, such person shall file a Notice of Endorsement of the document. The document shall be deemed fully executed upon the filing of any and all such Notices of Endorsement.

5. Notice of Electronic Filing.

Upon electronic filing of a pleading or other paper, a Notice of Electronic Filing will be sent by the Clerk to all e-mail address(es) of record in the action. Such Notice shall provide, at a minimum, the electronic docket number and the title of the paper filed, and shall provide the date and time filed.

6. Service

(a) Except as provided in subparagraph (b), all papers required to be served shall be served in non-electronic form in accordance with Rule 5 of the Rules of the Court and receipt of a Notice of Electronic Filing shall not constitute service.

(b) In the case of an attorney or unrepresented party or other person who has filed in a particular action a "Notice of Consent to Electronic Service", in a form to be prescribed by the Court, the Notice of Electronic Filing described in paragraph (5) of this Order shall constitute service on that attorney, unrepresented party or other person.

(c) The filing of the Notice of Consent to Electronic Service in a particular action constitutes consent to electronic service of all papers in that action, as provided herein, as a fully adequate and timely substitute for service otherwise permitted pursuant to Rule 5 of the Rules of the Court.

(d) Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon that person, and such paper is filed and served electronically pursuant to the EFP, five days shall be added to the prescribed period.

(e) Notwithstanding any provision of this Order, where the Rules of the Court require that any paper be served but not filed, or that any paper be served and filing of that paper be delayed, service of that paper shall be in nonelectronic form. Any subsequent filing of such previously-served paper shall be accomplished in the manner prescribed by this Order, and the paper need not be re-served upon parties who were previously served.

7. Docket

The USCIT Public Website shall denote in a separate electronic document for each action subject to the EFP the filing of any paper by or on behalf of a party and the entry of any order or judgment by the Court, regardless of whether such paper was filed electronically. The record of those filings and entries for each case shall be consistent with Rule 79 of the Rules of the Court and shall constitute the docket for purposes of that Rule.

8. Notice and Entry of Orders and Judgments.

The Clerk shall file electronically all orders, decrees, judgments, and proceedings of the Court in accordance with the EFP, which shall constitute entry of the order, decree, judgment or proceeding on the docket kept by the Clerk pursuant to Rules 58 and 79 of the Rules of the Court. Immediately upon the entry of an order or judgment in an action subject to the EFP, the Clerk shall transmit by e-mail to all e-mail address(es) of record in the action a notice of the entry of the order or judgment and shall make a note in the docket of the transmission. Transmission of the notice of entry shall constitute notice as required by Rule 79(c) of the Rules of the Court, but shall not constitute service of such notice unless the party has consented to electronic service under paragraph 6(b) of this Order.

9. Technical Failures.

(a) The Clerk shall deem the USCIT Public Website to be subject to a technical failure on a given day if the Website is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon in New York, New York on that day, in which case filings due that day, which were not filed due solely to such technical failures, shall become due the next business day. Such delayed filings shall be rejected unless accompanied by a declaration or affidavit attesting to the filing person's failed attempts to file electronically at least two times after 12:00 noon in New York, New York, separated by at least one hour on each day of delay due to such technical failure. The Clerk shall provide notice of all such technical failures on the USCIT Public Website status line, which persons may telephone in order to learn the current status of the Website. The Clerk shall maintain records of the nature and duration of all such technical failures.

(b) If a Notice of Electronic Filing is not received from the Court following transmission of a paper for filing, the paper will not be deemed filed. The person filing must attempt to re-file the document electronically until such a Notice is received, consistent with the provisions of subparagraph (a) permitting delayed filings.

(c) If, within 24 hours after filing a paper electronically, the party filing the paper discovers that the version of the paper available for viewing on the USCIT Public Website does not conform to the paper as transmitted upon filing, the filing party may file, of right, a re-transmitted copy of the paper. This provision (and the designation "Re-transmitted") shall not be used for filing a motion for errata as set forth in paragraph 3(e) of this Order.

10. Copyright and Other Proprietary Rights.

(a) The USCIT Public Website shall bear a prominent notice as follows: "The contents of each filing in the electronic case files on the USCIT Public Website may be subject to copyright and other proprietary rights (with the exception of the opinions, memoranda and orders of the Court). It is the user's obligation to determine and satisfy copyright or other use restrictions when publishing or otherwise distributing material found in the electronic case files. Transmission or reproduction of protected items beyond that allowed by fair use requires the written permission of the copyright owners. Users must make their own assessments of rights in light of their intended use."

(b) By consenting to the EFP, each party or other person and their counsel shall be deemed to consent to all uses of the filed materials consistent with the notice set forth in subparagraph (a).

(c) By producing discovery materials in an action subject to electronic filing, or by filing any material in the action electronically or otherwise, each party or subpoenaed non-party or other non-party so producing or filing, and all of the counsel to such persons, shall be deemed to consent to all uses of such materials by all parties to the action solely in connection with and for the purposes of the action, including the electronic filing in the action (by a party who did not originally file or produce such materials) of portions of such excerpts, quotations, or selected exhibits from such discovery materials or other filed materials as part of motion papers, pleadings or other filings with the Court which must refer to such excerpts, quotations, etc.

11. Protective Order.

In connection with discovery or the filing of any material, other than those items specifically exempted from electronic filing in subparagraph 3(a) or (b) of this Order, any person may apply by motion for an order prohibiting the electronic filing in the action of certain specifically-identified materials on the grounds that such materials are subject to copyright, other proprietary rights, privacy interests, or other specifically-identified interests and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. A motion for such an order shall be filed not less than five days before the materials to which the motion pertains are due to be produced or filed with the Court. Any material not filed electronically pursuant to such an order shall be filed with the Clerk and served as if the action were not subject to the EFP. Nothing in this paragraph shall be construed to change the standard for the issuance of a protective order respecting confidentiality in an action subject to the EFP.

12. Miscellaneous Provisions.

(a) The Clerk shall establish procedures to permit pleadings and other papers to be presented for electronic filing at the Court. The Clerk shall also provide for public access to all public electronic Court records. Facilities and equipment made available to permit access to the USCIT Public Website may not be used for any other purpose.

(b) Until such time as the United States Court of Appeals for the Federal Circuit provides notice to the Court that public access to the USCIT Public Website obviates or modifies any need for transmittal of the record on appeal of any action subject to the EFP as to which a notice of appeal to that Court of Appeals has been filed, when required, the Clerk shall deliver to the Court of Appeals, at that Court's election, either a complete non-electronic copy of the record on appeal or an electronic reproduction of that record on appeal as such record is reflected in the USCIT Public Website.

(c) This Administrative Order and the Users' Manual shall be posted on the USCIT Public Website in a location that may be reached from the home page of that Website via one

or more highly visible and easily found hyperlinks and shall be posted prominently in and otherwise made available in the Office of the Clerk. Any amendments to the EFP shall be similarly posted and published.

(d) This Administrative Order and the Users' Manual shall take effect on April 1, 2002 and may be amended by the Court from time to time on the Court's own initiative. This Administrative Order shall apply to all proceedings in actions brought after its effective date and all further proceedings in actions then pending, except actions in which a complaint was filed prior to the effective date of this Order.

(e) Notwithstanding Section 12(d) above, this Administrative Order shall apply only to those actions designated as EFP cases by the Court.

For the Court:

Dated: April 1, 2002
New York, New York

By: s/ Leo M. Gordon
Clerk of the Court